

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:12-CV-354-H

DENISE PAYNE, Individually)
and NATIONAL ALLIANCE FOR)
ACCESSABILITY, INC., a)
Florida not-for-profit)
corporation,)
)
Plaintiffs,)
)
)
)
v.)
)
)
)
BOSTON MARKET CORPORATION, a)
Foreign Corporation,)
)
Defendant.)

ORDER

This matter is before the court on defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of standing. Plaintiffs have responded, and defendant has replied. This matter is ripe for adjudication.

On June 19, 2012, plaintiffs filed this action under Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12181-12189. Defendant argues that plaintiffs have failed

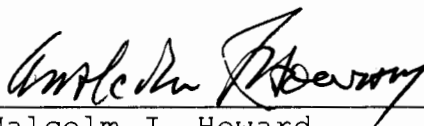
to sufficiently demonstrate an "injury in fact" as required to establish standing.

"[T]he irreducible constitutional minimum of standing contains three elements." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). These three elements are (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent; (2) a causal connection between the injury and the conduct complained of; and (3) the likelihood that a favorable decision will redress the injury. Id. at 560-61.

The court has carefully reviewed this matter and finds that plaintiff has demonstrated enough at this stage of the litigation to establish standing. The court notes that although plaintiff Payne lives in Florida, plaintiff Payne informed the court in the complaint that she had concrete plans to return to defendant's business on June 23, 2012. By affidavit filed August 24, 2012, in response to defendant's motion to dismiss, plaintiff Payne informed the court that she followed through with those plans and did in fact visit the defendant establishment a second time. See City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983) (plaintiff must show substantial likelihood of a "real or immediate threat that he will be wronged again.")

Therefore, defendant's motion to dismiss [DE #11] is
DENIED.

This 12th day of March 2013.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", written over a horizontal line.

Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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